

**ASSEMBLY BILL**

**No. 1793**

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**Introduced by Assembly Member Yee**  
**(Principal coauthor: Assembly Member Runner)**  
**(Coauthors: Assembly Members Koretz, Lieber, Mullin, and**  
**Vargas)**  
**(Coauthor: Senator Kuehl)**

January 5, 2004

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An act to amend Sections 313.1 and 313.4 of the Penal Code, relating to video games.

LEGISLATIVE COUNSEL'S DIGEST

AB 1793, as introduced, Yee. Video games: ratings.

Existing law sets forth various crimes relating to the distribution or exhibition of harmful matter, as defined, to minors. Existing law defines harmful matter with reference to, among other things, its appeal to the prurient interest and its depiction of sexual conduct. Existing law requires any person who sells or rents video recordings of harmful matter to create an area within his or her business for the placement of these recordings and for any material that advertises the sale or rental of these recordings, except as specified, and imposes certain other requirements on retailers of these recordings. Existing law provides that the failure to create and label the area is an infraction, and further provides that the failure to place a video recording or advertisement in the area is not an infraction.

This bill would provide, in addition, that a video game retailer who sells video games rated Mature by the Entertainment Software Ratings Board (ESRB) may not display those games on shelves that contain games with ratings other than Mature, and that the shelves containing

these games must be placed at a height of not less than 5 feet from the ground. The bill would require a video game retailer who sells video games rated Adults Only by the ESRB to create an area within his or her business for the placement of these games and for any material that advertises the sale or rental of these games, except as specified, and imposes certain other requirements on retailers of these games. The bill would prohibit a video game retailer from making available to a person under specified ages for sample or preview play any video game rated Mature or Adults Only, and would require every video game retailer to post a sign explaining the ESRB ratings system. A violation of these provisions would be an infraction. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 313.1 of the Penal Code is amended to  
2 read:

3 313.1. (a) Every person who, with knowledge that a person  
4 is a minor, or who fails to exercise reasonable care in ascertaining  
5 the true age of a minor, knowingly sells, rents, distributes, sends,  
6 causes to be sent, exhibits, or offers to distribute or exhibit by any  
7 means, including, but not limited to, live or recorded telephone  
8 messages, any harmful matter to the minor shall be punished as  
9 specified in Section 313.4.

10 It does not constitute a violation of this section for a telephone  
11 corporation, as defined by Section 234 of the Public Utilities Code,  
12 to carry or transmit messages described in this chapter or to  
13 perform related activities in providing telephone services.

14 (b) Every person who misrepresents himself or herself to be the  
15 parent or guardian of a minor and thereby causes the minor to be  
16 admitted to an exhibition of any harmful matter shall be punished  
17 as specified in Section 313.4.



(c) (1) Any person who knowingly displays, sells, or offers to sell in any coin-operated or slug-operated vending machine or mechanically or electronically controlled vending machine that is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(2) Any person who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any harmful matter, as defined in subdivision (a) of Section 313, shall be punished as specified in Section 313.4.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county that restricts the display of material that is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled “adults only.” The failure to create and label the area is an infraction, punishable by a fine not to exceed one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.

(f) Any person who rents a video recording and alters the video recording by adding harmful material, and who then returns the video recording to a video rental store, shall be guilty of a misdemeanor. It shall be a defense in any prosecution for a

1 violation of this subdivision that the video rental store failed to  
2 post a sign, reasonably visible to all customers, delineating the  
3 provisions of this subdivision.

4 (g) It shall be a defense in any prosecution for a violation of  
5 subdivision (a) by a person who knowingly distributed any  
6 harmful matter by the use of telephones or telephone facilities to  
7 any person under the age of 18 years that the defendant has taken  
8 either of the following measures to restrict access to the harmful  
9 matter by persons under 18 years of age:

10 (1) Required the person receiving the harmful matter to use an  
11 authorized access or identification code, as provided by the  
12 information provider, before transmission of the harmful matter  
13 begins, where the defendant previously has issued the code by  
14 mailing it to the applicant after taking reasonable measures to  
15 ascertain that the applicant was 18 years of age or older and has  
16 established a procedure to immediately cancel the code of any  
17 person after receiving notice, in writing or by telephone, that the  
18 code has been lost, stolen, or used by persons under the age of 18  
19 years or that the code is no longer desired.

20 (2) Required payment by credit card before transmission of the  
21 matter.

22 (h) It shall be a defense in any prosecution for a violation of  
23 paragraph (2) of subdivision (c) that the defendant has taken either  
24 of the following measures to restrict access to the harmful matter  
25 by persons under 18 years of age:

26 (1) Required the person receiving the harmful matter to use an  
27 authorized access or identification card to the vending machine  
28 after taking reasonable measures to ascertain that the applicant was  
29 18 years of age or older and has established a procedure to  
30 immediately cancel the card of any person after receiving notice,  
31 in writing or by telephone, that the code has been lost, stolen, or  
32 used by persons under the age of 18 years or that the card is no  
33 longer desired.

34 (2) Required the person receiving the harmful matter to use a  
35 token in order to utilize the vending machine after taking  
36 reasonable measures to ascertain that the person was 18 years of  
37 age or older.

38 (i) Any list of applicants or recipients compiled or maintained  
39 by an information-access service provider for purposes of  
40 compliance with paragraph (1) of subdivision (g) is confidential

1 and shall not be sold or otherwise disseminated except upon order  
2 of the court.

3 (j) (1) *For the purposes of this subdivision, the following terms*  
4 *have the following meanings:*

5 (A) *“ESRB” means the Entertainment Software Rating Board.*

6 (B) *“Video game retailer” means a person who distributes*  
7 *video games to the public.*

8 (C) *“Video game” means an object or device that stores*  
9 *recorded data or instructions, receives data or instructions*  
10 *generated by a person who uses it, and, by processing the data or*  
11 *instructions, creates an interactive game capable of being played,*  
12 *viewed, or experienced on or through a computer, gaming system,*  
13 *console, or other technology.*

14 (2) *A video game retailer who sells video games rated Mature*  
15 *by the ESRB may not display those games on shelves that contain*  
16 *games with ratings other than Mature. The shelves containing*  
17 *games rated Mature shall be placed at a height of not less than five*  
18 *feet from the ground.*

19 (3) *A video game retailer who sells video games rated Adults*  
20 *Only by the ESRB shall create an area within his or her business*  
21 *establishment for the placement of these games and for any*  
22 *material that advertises the sale or rental of these games, and shall*  
23 *place these games and this advertising material in the area. The*  
24 *area shall be labeled “adults only.” Any person who sells or*  
25 *distributes video games rated Adults Only to others for resale*  
26 *purposes shall inform the purchaser of the requirements of this*  
27 *section. This subdivision shall not apply to public libraries as*  
28 *defined in Section 18710 of the Education Code.*

29 (4) *A video game retailer may not make available to a person*  
30 *under 17 years of age for sample or preview play any video game*  
31 *rated Mature by the ESRB.*

32 (5) *A video game retailer may not make available to a person*  
33 *under 18 years of age for sample or preview play any video game*  
34 *rated Adults Only by the ESRB.*

35 (6) *Every video game retailer shall post a sign in a conspicuous*  
36 *place in his or her business establishment explaining the ESRB*  
37 *ratings system, including ESRB ratings symbols indicating the*  
38 *suitable age group for a video game and ESRB content descriptors*  
39 *indicating elements of the game’s content that are of potential*  
40 *interest or concern.*

1     (7) *A violation of this subdivision is an infraction punishable*  
2 *by a fine not to exceed one hundred dollars (\$100).*

3     SEC. 2. Section 313.4 of the Penal Code is amended to read:

4     313.4. Every person who violates Section 313.1, other than  
5 subdivision (e) *or* (j), is punishable by fine of not more than two  
6 thousand dollars (\$2,000), by imprisonment in the county jail for  
7 not more than one year, or by both that fine and imprisonment.  
8 However, if the person has been previously convicted of a  
9 violation of Section 313.1, other than subdivision (e) *or* (j), or of  
10 any section of Chapter 7.5 (commencing with Section 311) of Title  
11 9 of Part 1 of this code, the person shall be punished by  
12 imprisonment in the state prison.

13     SEC. 3. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.

